# AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 525, AS REPORTED OFFERED BY MR. KIND OF WISCONSIN AND MR. ANDREWS OF NEW JERSEY

Strike all after the enacting clause and insert the following:

## 1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- 2 (a) Short Title.—This Act may be cited as the
- 3 "Small Business Affordable Health Insurance Act of
- 4 2005".
- 5 (b) Table of Contents of table of contents of
- 6 this Act is as follows:
  - Sec. 1. Short title; table of contents.
  - Sec. 2. Establishment of Small Employer Health Benefits Program (SEHBP).
    - "Part 8—Small Employer Health Benefits Program (SEHBP)
    - "Sec. 801. Establishment of program.
    - "Sec. 802. Premium assistance for small employers and their employees.
    - "Sec. 803. Qualified State health pooling arrangements.
    - "Sec. 804. Establishment of national health pooling arrangement.
    - "Sec. 805. Coordination and consultation.
    - "Sec. 806. Public education.
    - "Sec. 807. Funding for premium assistance and pooling arrangements.
  - Sec. 3. Institute of Medicine study and report.

# 7 SEC. 2. ESTABLISHMENT OF SMALL EMPLOYER HEALTH

- 8 BENEFITS PROGRAM (SEHBP).
- 9 (a) In General.—Subtitle B of title I of the Em-
- 10 ployee Retirement Income Security Act of 1974 is amend-
- 11 ed by adding after part 7 the following new part:



# 1 "PART 8—SMALL EMPLOYER HEALTH BENEFITS 2 PROGRAM (SEHBP) 3 "SEC. 801. ESTABLISHMENT OF PROGRAM. 4 "(a) IN GENERAL.—The Secretary shall establish, in 5 accordance with this part, a program (to be known as the 'Small Employer Health Benefits Program' or 'SEHBP') 6 7 providing— 8 "(1) access to qualified health pooling arrange-9 ments (consisting of both qualified State health pool-10 ing arrangements and a national health pooling ar-11 rangement) under which self-only and family cov-12 erage is offered to small employers and their employ-13 ees, and "(2) premium assistance to small employers 14 15 and their employees to assist with the payment of 16 premiums incurred for coverage offered under such 17 arrangements. 18 "(b) Limitations.— 19 "(1) Employer must bear 50 percent of 20 COST.—Premium assistance shall not be provided 21 under this part with respect to premiums incurred



the premiums are paid by the employer.

for any period for coverage under a qualified health

pooling arrangement unless at least 50 percent of

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only with respect to coverage for the 10-year period
beginning on the date the employer first begins par-
ticipating in a qualified health pooling arrangement.
"(3) Employers offering other health
BENEFITS.—In the case of an employer who paid or
incurred any expenses for health benefits for the em-
ployees of such employer during the first calendar
year ending on or after the date of the enactment
of this section, premium assistance shall be provided
under this part only if the employer begins partici-
pating in a qualified health pooling arrangement
during the 2-year period beginning on the later of—
"(A) the date of the enactment of this sec-
tion, or
"(B) the first date that a qualified health
pooling arrangement exists which allows such
employer to participate.
"(4) Participation requirements.—Pre-
mium assistance shall not be provided under this
part with respect to premiums incurred for any pe-
riod unless at all times during such period coverage
for health benefits under a qualified health pooling
arrangement is available to all employees of the em-
ployer under similar terms, except that, under regu-



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lations of the Secretary—

1	"(A) coverage under the arrangement may
2	exclude employees with less than 90 days of
3	service with the employer, and
4	"(B) in the case of an employee serving in
5	a position in which service is customarily less
6	than 1,000 hours per year, the reference in
7	paragraph (1) to '50 percent' shall be deemed
8	a percentage reduced to a percentage that bears
9	the same ratio to 50 percent as the number of
10	hours of service per year customarily in such
11	position bears to 1,000.
12	"(5) Amounts paid under salary reduc-
13	TION ARRANGEMENTS.—No amount paid or incurred
14	pursuant to a salary reduction arrangement shall be
15	taken into account under subsection (a).
16	"(c) Definitions and Special Rules.—For pur-
17	poses of this part—
18	"(1) Small employer.—
19	"(A) IN GENERAL.—The term 'small em-
20	ployer' means an employer who normally em-
21	ployed not more than 100 employees on a typ-
22	ical business day during the preceding calendar
23	year (determined under rules similar to the
24	rules applicable under section $601(h)$



1	"(B) Employers not in existence in
2	PRECEDING YEAR.—In the case of an employer
3	which was not in existence throughout the pre-
4	ceding calendar year, the determination of
5	whether such employer is a small employer shall
6	be based on the number of employees that it is
7	reasonably expected such employer will normally
8	employ on business days in the current calendar
9	year.
10	"(C) Predecessors.—The Secretary may
11	prescribe regulations which provide for ref-
12	erences in this paragraph to an employer to be
13	treated as including references to predecessors
14	of such employer.
15	"(D) PERMANENT STATUS AS SMALL EM-
16	PLOYER.—In the case of an employer who
17	meets the requirements of this paragraph with
18	respect to the calendar year in which such em-
19	ployer first begins participating in a qualified
20	health pooling arrangement, such employer
21	shall not fail to be treated as a small employer
22	for any subsequent calendar year.
23	"(2) Family Coverage.—The term 'family
24	coverage' means coverage for health benefits of the

employee and qualified family members of the em-



1	ployee (as defined in section 35(d) of the Internal
2	Revenue Code of 1986, but without regard to the
3	last sentence of paragraph (1) thereof).
4	"(3) Qualified health pooling arrange-
5	MENT.—The term 'qualified health pooling arrange-
6	ment' means a qualified State health pooling ar-
7	rangement described in section 802 or the national
8	health pooling arrangement described in section 803
9	"(4) Entities under common control.—
10	"(A) Controlled group of corpora-
11	TIONS.—All employees of all corporations which
12	are members of the same controlled group of
13	corporations shall be treated as employed by a
14	single employer. In any such case, the total pre-
15	mium assistance (if any) provided to each mem-
16	ber of the controlled group and the total pre-
17	mium assistance (if any) provided to its employ-
18	ees shall be its proportionate share of the wages
19	paid to all employees of members of the con-
20	trolled group. For purposes of this subpara-
21	graph, the term 'controlled group of corpora-
22	tions' has the meaning given to such term by
23	subsection (a) of section 1563 of the Internal

Revenue Code of 1986, except that—



1	"(i) 'more than 50 percent' shall be
2	substituted for 'at least 80 percent' each
3	place it appears in subsection (a)(1) of
4	such section 1563, and
5	"(ii) the determination shall be made
6	without regard to subsections (a)(4) and
7	(e)(3)(C) of such section 1563.
8	"(B) Employees of partnerships, pro-
9	PRIETORSHIPS, ETC., WHICH ARE UNDER COM-
10	MON CONTROL.—Under regulations prescribed
11	by the Secretary—
12	"(i) all employees of trades or busi-
13	ness (whether or not incorporated) which
14	are under common control shall be treated
15	as employed by a single employer, and
16	"(ii) the total premium assistance (if
17	any) provided to each trade or business
18	and the total premium assistance (if any)
19	provided to its employees shall be its pro-
20	portionate share of the wages paid to all
21	employees of such trades or business under
22	common control.
23	The regulations prescribed under this subpara-
24	graph shall be based on principles similar to the



1	principles which apply in the case of subpara-
2	graph (A).
3	"SEC. 802. PREMIUM ASSISTANCE FOR SMALL EMPLOYERS
4	AND THEIR EMPLOYEES.
5	"(a) Employer Premium Assistance.—
6	"(1) In General.—Pursuant to section
7	801(a)(2), the Secretary shall provide to small em-
8	ployers who are eligible under paragraph (3) and
9	who elect to provide for coverage of their employees
10	under a qualified health pooling arrangement pre-
11	mium assistance for premiums paid by the employer
12	for such coverage with respect to employees whose
13	individual income (as determined by the Secretary)
14	is at or below 200 percent of the poverty line (as de-
15	fined in section 673(2) of the Community Services
16	Block Grant Act (42 U.S.C. 9902(2)), including any
17	revision required by such section) for an individual.
18	"(2) Premium assistance scaled according
19	TO SIZE OF EMPLOYER.—The premium assistance
20	provided under paragraph (1) shall be designed so
21	that the premium assistance equals, for any calendar
22	year—
23	"(A) 50 percent of the portion of the pre-
24	mium payable by the employer for the coverage,
25	in the case of small employers who employ an



1	average of fewer than 11 employees on business
2	days during the preceding calendar year;
3	"(B) 35 percent of the portion of the pre-
4	mium payable by the employer for the coverage,
5	in the case of small employers who employ an
6	average of more than 10 employees but fewer
7	than 26 employees on business days during the
8	preceding calendar year; and
9	"(C) 25 percent of the portion of the pre-
10	mium payable by the employer for the coverage,
11	in the case of small employers who employ an
12	average of more than 25 employees but fewer
13	than 51 employees on business days during the
14	preceding calendar year.
15	"(3) ELIGIBLE EMPLOYERS.—A small employer
16	is eligible under this paragraph if such employer—
17	"(A) normally employed fewer than 25 em-
18	ployees on a typical business day during the
19	preceding calendar year (determined under
20	rules similar to the rules applicable under sec-
21	tion 601(b)), and
22	"(B) paid such employees during such year
23	at an average annual rate of income (consisting
24	of wages and salary) per employee which was at
25	or below the median income (as determined by

or below the median income (as determined by



1	the Secretary for the most recent calendar year
2	for which data are available as of the end of the
3	preceding calendar year) for an individual resid-
4	ing in the State in which the employer main-
5	tains its principal place of business.
6	"(b) Employee Premium Assistance.—
7	"(1) In General.—Pursuant to section
8	801(a)(2), the Secretary shall provide to employees
9	of small employers premium assistance for premiums
10	for coverage under qualified health pooling arrange-
11	ments paid by such employees in the case of employ-
12	ees whose family income (as determined by the Sec-
13	retary) is at or below 200 percent of the poverty line
14	(as defined in section 673(2) of the Community
15	Services Block Grant Act (42 U.S.C. 9902(2)), in-
16	cluding any revision required by such section) for a
17	family of the size involved.
18	"(2) Amount of Premium Assistance.—Such
19	premium assistance shall be in an amount equal to
20	the excess of the portion of the total premium for
21	coverage otherwise payable by the employee under
22	this part for any period, over 5 percent of the family
23	income (as determined under paragraph (1)(A)) of



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the employee for such period.

1	"(3) Coordination of Premium Assist-
2	ANCE.—Notwithstanding paragraph (1), under regu-
3	lations of the Secretary, the total premium assist-
4	ance to which any employee may be provided under
5	this subsection for any period shall be reduced (to
6	not less than zero) by the total amount of subsidies
7	for which such employee is eligible for such period
8	under any Federal or State health insurance subsidy
9	program (including a program under title V, XIX, or
10	XXI of the Social Security Act). For purposes of
11	this paragraph, an employee is 'eligible' for a sub-
12	sidy under a program if such employee is entitled to
13	such subsidy or would, upon filing application there-
14	fore, be entitled to such subsidy.
15	"(4) Authority to expand eligibility.—
16	The Secretary may, to the extent of available fund-
17	ing, provide for expansion of the premium assistance
18	program under this subsection to employees whose
19	family income (as defined by the Secretary) is at or
20	below 300 percent of the poverty line (as determined
21	under paragraph (1)).
22	"(c) Procedures.—The Secretary shall establish by
23	regulation applications, methods, and procedures for car-
24	rying out this section, including measures to ascertain or
25	confirm levels of income.



1	"SEC. 803. QUALIFIED STATE HEALTH POOLING ARRANGE-
2	MENTS.
3	"(a) Defined.—For purposes of this part, the term
4	'qualified State health pooling arrangement' means an ar-
5	rangement established by a State which meets the fol-
6	lowing requirements:
7	"(1) COVERAGE PROVIDED BY HEALTH INSUR-
8	ANCE ISSUER.—The health benefits coverage is pro-
9	vided by a health insurance issuer (as defined in sec-
10	tion $733(b)(2)$ ).
11	"(2) Health benefits coverage.—The ar-
12	rangement provides health benefits coverage that the
13	Secretary determines is substantially similar to the
14	health benefits coverage in any of the four largest
15	health benefits plans (determined by enrollment) of-
16	fered under chapter 89 of title 5, United States
17	Code.
18	"(3) Group Health Plan requirements.—
19	The health benefits coverage provided under the ar-
20	rangement meets the requirements applicable to a
21	group health plan under this title and State law.
22	"(4) Guaranteed issue and renewable.—
23	The arrangement does not deny coverage (including
24	renewal of coverage) with respect to employees of
25	any eligible small employer or qualifying family

members of such employees on the basis of health



1	status of such employees or family members or any
2	other condition or requirement that the Secretary
3	determines constitutes health underwriting.
4	"(5) No preexisting condition exclu-
5	SION.—The arrangement does not permit a pre-
6	existing condition exclusion as defined under section
7	701(b)(1).
8	"(6) No underwriting; community-rated
9	PREMIUMS.—(A) Subject to subparagraph (B), the
10	arrangement does not permit underwriting, through
11	a preexisting condition limitation, differential bene-
12	fits, or different premium levels, or otherwise, with
13	respect to such coverage for employees or their
14	qualifying family members.
15	"(B) The premiums charged for such coverage
16	are community-rated for individuals without regard
17	to health status.
18	"(7) No riders.—The arrangement does not
19	permit riders to the health benefits coverage.
20	"(8) Accessibility to eligible small em-
21	PLOYERS.—The arrangement makes such coverage
22	available to an eligible small employer without re-
23	gard to whether premium assistance is available
24	under section 802 with respect to such employer or



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its employees.  $\,$ 

1	"(9) Minimum of two plans offered
2	UNDER THE ARRANGEMENT.—The arrangement
3	makes available at least two alternative forms of
4	health benefits coverage.
5	"(b) Limitation on Enrollment Periods.—A
6	qualified State health pooling arrangement may provide
7	limits on the periods of times during which employees may
8	elect coverage offered under the arrangement, but the ar-
9	rangement shall not be treated as meeting the require-
10	ments of this section unless the arrangement provides for
11	at least annual open enrollment periods and enrollment
12	at the time of initial eligibility to enroll and upon appro-
13	priate changes in family circumstances.
14	"(c) QUALIFYING FAMILY MEMBER.—For purposes
15	of this part, the term 'qualifying family member' has the
16	meaning given such term in section 35(d) of the Internal
17	Revenue Code of 1986, applied without regard to the last
18	sentence of paragraph (1) thereof.
19	"(d) State Defined.—For purposes of this part
20	the term 'State' includes the District of Columbia, Puerto
21	Rico, the Virgin Islands of the United States, Guam
22	American Samoa, and the Northern Mariana Islands.



- 24 be construed as requiring a State to establish or maintain
- 25 a qualified State health pooling arrangement.

1	"(f) Creditable Coverage for Purposes of
2	HIPAA.—Health benefits coverage provided under a
3	qualified State health pooling arrangement under this sec-
4	tion (and coverage provided under a National Pooling Ar-
5	rangement under section 803) shall be treated as cred-
6	itable coverage for purposes of part 7.
7	"(g) Annual Reports.—
8	"(1) In general.—Each State that offers a
9	qualified State health pooling arrangement under
10	this section in a year shall submit, in a form and
11	manner specified by the Secretary, a report on the
12	operation of the arrangement in that year.
13	"(2) Contents of Report.—Reports required
14	under paragraph (1) shall include the following:
15	"(A) A description of the health benefits
16	coverage offered under the arrangement.
17	"(B) The number of employers that par-
18	ticipated in the arrangement.
19	"(C) The number of employees and quali-
20	fying family members of employees who re-
21	ceived health benefits coverage under the ar-
22	rangement.
23	"(D) The premiums charged for the health
24	benefits coverage under the arrangement.





23 State law.

### 1 "SEC. 804. ESTABLISHMENT OF NATIONAL HEALTH POOL-

- 2 ING ARRANGEMENT.
- 3 "(a) IN GENERAL.—The Secretary shall provide for
- 4 the offering and oversight of a national health pooling ar-
- 5 rangement to eligible small employers.
- 6 "(b) National Health Pooling Arrangement
- 7 Defined.— For purposes of this section, the term 'na-
- 8 tional health pooling arrangement' means an arrangement
- 9 under which health benefits coverage is offered under
- 10 terms and conditions that meet the requirements of sec-
- 11 tion 803(a).
- 12 "(c) USE OF FEHBP MODEL.—The Secretary shall
- 13 provide for the national health pooling arrangement using
- 14 the model of the Federal employees health benefits pro-
- 15 gram under chapter 89 of title 5, United States Code, to
- 16 the extent practicable and consistent with the provisions
- 17 of this part. In carrying out such model, the Secretary
- 18 shall, to the maximum extent practicable, negotiate the
- 19 most affordable and substantial coverage possible for
- 20 small employers.
- 21 "(d) Limitation on Enrollment Periods.—The
- 22 Secretary may provide limits on the periods of times dur-
- 23 ing which employees may elect coverage offered under the
- 24 national health pooling arrangement, but the Secretary
- 25 shall provide for at least annual open enrollment periods



- 1 and enrollment at the time of initial eligibility to enroll
- 2 and upon appropriate changes in family circumstances.
- 3 "(e) Authorizing Use of States in Making Ar-
- 4 RANGEMENTS FOR COVERAGE.—In lieu of the coverage
- 5 otherwise arranged by the Secretary under this section,
- 6 the Secretary may enter an arrangement with a State
- 7 under which a State arranges for the provision of quali-
- 8 fying health insurance coverage to eligible small employers
- 9 in such manner as the Secretary would otherwise arrange
- 10 for such coverage.

# 11 "SEC. 805. COORDINATION AND CONSULTATION.

- 12 "(a) Coordination of State and National Pro-
- 13 GRAMS.—The Secretary shall provide by regulation for co-
- 14 ordination of the offering under this part of health bene-
- 15 fits coverage to employees of small employers under State
- 16 health pooling arrangements and the offering under this
- 17 part of such coverage to such employees under the na-
- 18 tional health pooling arrangement.
- 19 "(b) Consultation.—In carrying out the provisions
- 20 of this part, the Secretary shall consult with the Secretary
- 21 of Health and Human Services and the Director of the
- 22 Office of Personnel Management.

# 23 "SEC. 806. PUBLIC EDUCATION.

- 24 "The Secretary shall maintain an ongoing program
- 25 of public education under which the Secretary shall—



1	"(1) publicize the national health pooling ar-
2	rangement established under section 804, and
3	"(2) assist, and participate with, the States in
4	publicizing the qualified State health pooling ar-
5	rangements established under section 803.
6	"SEC. 807. FUNDING FOR PREMIUM ASSISTANCE AND POOL-
7	ING ARRANGEMENTS.
8	"(a) Premium Assistance.—There are authorized
9	to be appropriated to the Secretary such sums as may be
10	necessary to provide for premium assistance under section
11	802.
12	"(b) Grants to States Establishing and Oper-
13	ATING QUALIFIED STATE HEALTH POOLING ARRANGE-
14	MENTS.—The Secretary may provide for grants to States
15	to establish and operate qualified State health pooling ar-
16	rangements described in section 803. There are authorized
17	to be appropriated to the Secretary such sums as may be
18	necessary to provide such grants.
19	"(c) Funding for National Health Pooling
20	ARRANGEMENT AND OTHER DUTIES OF THE SEC-
21	RETARY.—There are authorized to be appropriated to the
22	Secretary such sums as may be necessary to provide for
23	the offering and operation of the national health pooling
24	arrangement under section 804 and to carry out the other



25 duties of the Secretary under this part.".

- 1 (b) CLERICAL AMENDMENT.—The table of contents
- 2 in section 1 of the Employee Retirement Income Security
- 3 Act of 1974 is amended by inserting after the item relat-
- 4 ing to section 734 the following new items:

"Part 8—Small Employer Health Benefits Program (SEHBP)

- "Sec. 801. Establishment of program.
- "Sec. 802. Premium assistance for small employers and their employees.
- "Sec. 803. Qualified State health pooling arrangements.
- "Sec. 804. Establishment of national health pooling arrangement.
- "Sec. 805. Coordination and consultation.
- "Sec. 806. Public education.
- "Sec. 807. Funding for premium assistance and pooling arrangements.".

### 5 SEC. 3. INSTITUTE OF MEDICINE STUDY AND REPORT.

- 6 (a) Study.—The Secretary shall enter into an ar-
- 7 rangement under which the Institute of Medicine of the
- 8 National Academy of Sciences shall conduct a study on
- 9 the operation of qualified State health pooling arrange-
- 10 ments under section 803 of the Employee Retirement In-
- 11 come Security Act of 1974 and the national health pooling
- 12 arrangement under section 804 of such Act.
- 13 (b) Matters Studied.—The study conducted under
- 14 subsection (a) shall include the following:
- 15 (1) An assessment of the success of the ar-
- rangements.
- 17 (2) A determination of the affordability of
- health benefits coverage under the arrangements for
- employers and employees.
- 20 (3) A determination of the access of small em-
- 21 ployers to health benefits coverage.



1	(4) A determination of the extent to which part
2	8 of subtitle B of title I of the Employee Retirement
3	Income Security Act of 1974 provides premium as-
4	sistance for eligible small employers (and premium
5	assistance for employees of such employers) that
6	provided (or would have provided) health benefits
7	coverage in the absence of such premium assistance.
8	(5) Recommendations with respect to—
9	(A) extension of the period for which the
10	premium assistance under part 8 of subtitle B
11	of title I of the Employee Retirement Income
12	Security Act of 1974 is available to employers
13	and employees or an appropriate phase-out of
14	such premium assistance over time;
15	(B) expansion of categories of persons eli-
16	gible for such premium assistance;
17	(C) expansion of persons eligible for health
18	benefits coverage under the arrangements; and
19	(D) such other matters as the Institute de-
20	termines appropriate.
21	(c) Report.—Not later than January 1, 2010, the
22	Comptroller General shall submit to the Congress a report
23	on the study conducted under subsection (a).
	Amend the title so as to read: "A bill to amend title

I of the Employee Retirement Income Security Act of



1974 to encourage small employers to offer affordable health coverage to their employees through qualified health pooling arrangements, to encourage the establishment and operation of these arrangements, and for other purposes.".

